

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE DISTRICT OF SOUTH CAROLINA

John Henry, #299199,)	Civil Action No.: 4:13-cv-1947-MGL
)	
Plaintiff,)	
)	
vs.)	ORDER AND OPINION
)	
AM Dean, and South Carolina)	
Department of Corrections,)	
)	
Defendants.)	
_____)	
)	

Plaintiff John Henry (“Plaintiff”), an inmate with the South Carolina Department of Corrections (“SCDC”), proceeding *pro se* filed this action against AM Dean and South Carolina Department of Corrections (“Defendants”) in the South Carolina Court of Common Pleas in Richland County. On July 16, 2013, Defendants filed a Notice of Removal alleging that the Complaint contained federal claims. (ECF No. 1.) On July 25, 2013, Plaintiff filed a motion to remand the case back to state court. (ECF No. 13.) On August 26, 2013, the court issued an Order *sua sponte* requesting that Plaintiff clarify whether he is only pursuing state law claims. (ECF No. 18.) Plaintiff filed a reply on September 6, 2013, stating that he “filed a state ‘negligence’ tort claim complaint pursuant to 15-78-10 S.C. Code” and requesting the matter be remanded to state court. (ECF No. 23.) Defense counsel did not object to the remand request.

This matter is now before the Court upon the Report and Recommendation (“Report”) of United States Magistrate Judge Thomas E. Rogers, III, to whom it was referred pursuant to 28 U.S.C. § 636(b)(1)(A) and Local Rule 73.02(B)(2)(e), D.S.C. Upon review, the Magistrate Judge found that Plaintiff had expressed an intent to only pursue state-law claims in his Complaint and as such this Court lacks subject matter jurisdiction over this matter. The Magistrate Judge recommends

that the case be remanded to the Court of Common Pleas for Richland County, South Carolina. (ECF No. 26.) Neither party objected to the Magistrate Judge's Recommendation.

The Magistrate Judge makes only a recommendation to this Court. The recommendation has no presumptive weight. The responsibility to make a final determination remains with this Court. *See Mathews v. Weber*, 423 U.S. 261, 270-71 (1976). The Court may accept, reject, or modify, in whole or in part, the findings or recommendations made by the Magistrate Judge. 28 U.S.C. § 636(b)(1). The Court may also receive further evidence or recommit the matter to the Magistrate Judge with instructions. *Id.* The Court is charged with making a *de novo* determination of those portions of the Report and Recommendation to which specific objections are made. As noted above, neither party filed objections to the Report and Recommendation.

After a thorough review of the record, the Report and Recommendation, and the applicable law, the Court agrees with the conclusions of the Magistrate Judge. Accordingly, the Court adopts and incorporates the Report and Recommendation by reference in this Order. This matter is REMANDED to the Court of Common Pleas for Richland County, South Carolina. The Clerk of this Court is directed to forward the file along with a certified copy of this Order to the Clerk of Court for Richland County.

IT IS SO ORDERED.

s/Mary G. Lewis
United States District Judge

Spartanburg, South Carolina
October 30, 2013